

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JIM DALE DAVIS,
CDCR #J-41150,

vs.

Plaintiff,

R. POWELL; T. BOREM; KAY OURS;
LARRY SMALLS; R. SUTTON;
G.J. JANDA; C. BUTLER; BUILTMAN;
D. FOSTON,

Defendants.

CASE NO. 10CV1891 JLS (RBB)

**ORDER (1) ADOPTING REPORT
AND RECOMMENDATION AND
(2) GRANTING DEFENDANTS'
MOTION TO DISMISS
COMPLAINT**

(ECF Nos. 17, 24)

Presently before the Court is Defendants' R. Powell, T. Borem, Kay Ours, Larry Smalls, R. Sutton, G.J. Janda, C. Butler, Buildman, and D. Foston's motion to dismiss complaint. (Mot. to Dismiss, ECF. No. 17). Also before the Court is Magistrate Judge Brooks's report and recommendation, recommending the Court grant Defendants' motion to dismiss complaint. (R&R, ECF No. 24)

Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district court's duties in connection with a magistrate judge's report and recommendation. The district court must "make a de novo determination of those portions of the report to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667, 673–76

1 (1980); *United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). However, in the absence of
 2 timely objection, the Court “need only satisfy itself that there is no clear error on the face of the
 3 record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note
 4 (citing *Campbell v. U.S. Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)).

5 Here, neither party has timely filed objections to the report and recommendation. Having
 6 reviewed it, the Court finds that it is thorough, well reasoned, and contains no clear error.
 7 Accordingly, the Court hereby (1) **ADOPTS** Magistrate Judge Brooks’s report and
 8 recommendation; (2) **GRANTS** Defendants’ motion to dismiss complaint.

9 Per Magistrate Judge Brooks’s report and recommendation, Plaintiff’s claims against
 10 Defendants Sutton, Butler, Builteman, Janda, and Foston in counts one and two are **DISMISSED**
 11 **WITH PREJUDICE**; Plaintiff’s claim against Defendant Small as to count two is **DISMISSED**
 12 **WITHOUT PREJUDICE**; Plaintiff’s Religious Land Use and Institutionalized Persons Act of
 13 2000 (“RLUIPA”) claims against Defendants Powell, Borem, and Ours are **DISMISSED**
 14 **WITHOUT PREJUDICE**; Plaintiff’s RLUIPA claims against Defendants Small, Powell, Borem,
 15 and Ours, in their individual capacities, are **DISMISSED WITHOUT PREJUDICE**; and
 16 Plaintiff’s RLUIPA claims for monetary damages against all Defendants in their official and
 17 individual capacities are **DISMISSED WITH PREJUDICE**.

18 Finally, Plaintiff’s request to amend his First Amendment claims against the Defendants in
 19 counts one and two is **GRANTED**.

20 **IT IS SO ORDERED.**

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22 DATED: September 15, 2011

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 24 Honorable Janis L. Sammartino
 25 United States District Judge

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